

From: Jeff Bonar
To: Microsoft ATR
Date: 1/27/02 9:04am
Subject: Microsoft Settlement

To Whom it May Concern:

Pursuant to the Tunney Act, I am writing to comment on the proposed Department of Justice (DOJ) settlement of the United States vs. Microsoft antitrust case.

Background:

I am the founder and CEO of JumpStart Wireless Corporation. We develop wireless software applications available for 1/10th the cost of wireless software using convention techniques. As the leader of a small software company, I read the proposed Microsoft settlement with dismay. Microsoft has used it's monopoly position in desktop operating systems (OS) to effectively kill off all competition in the desktop software and small network space. Their business actions over recent months, with the release of the Windows XP operating system, indicate that they have their eyes in similarly killing off competition for multimedia applications and network services -- their ".Net" initiatives.

Similar business behavior for Wireless software is only a matter of time. Already Windows CE, Pocket PC, and the code-named "Stinger" phones are marketed using techniques that leverage Microsoft's desktop monopoly.

Software and information technology is a critical part of the evolving "Information Age". To allow one company to dominate leverage their monopoly to dominate major segments of information technology costs all of us -- the market cannot function to produce innovation.

I feel strongly that the settlement of Microsoft's monopoly case should provide real, strong, and effective remedies that force Microsoft to compete on a level playing field.

Specific Failing in the Proposed Settlement:

1. The DOJ settlement should restrict the core way in which Microsoft unlawfully maintains its Windows operating system (OS) monopoly, namely bundling and tying competing platform software (known as ?middleware?) like Web browsers and Java, to the OS. While technically obscure, these components are the engine of innovation in the emerging world of networked and wireless applications. Particularly offensive, for example, is the Windows XP

decision to treat all Java applications as security threats. The Court of Appeals specifically rejected Microsoft's petition for rehearing on the bundling issue, yet the proposed settlement does nothing about it

2. The DOJ settlement has no provisions to create competition in the OS market that Microsoft unlawfully monopolized. The D.C. Circuit ruled that a remedy must "unfetter [the] market from anticompetitive conduct" and . . . "terminate the illegal monopoly," but the DOJ deal does nothing to restore competition with Windows. Most critical, the new settlement should put complete documentation of the detailed Windows information (known as "APIs") in the public domain. Because this is technically quite difficult without the release of information that Microsoft withholds from most developers, Microsoft must be compelled to fully cooperate in this activity. As currently formulated, the DOJ settlement only reinforces the Windows monopoly.

3. The DOJ settlement has no provisions directed to new markets where Microsoft is using the same bundling and restrictive practices to preserve and extend its Windows monopoly. Microsoft continues to demolish potential competition in new markets just as it did in 1995-98 to Netscape. The Court of Appeals ruled that a remedy must "ensure that there remain no practices likely to result in monopolization in the future," but the DOJ deal does not even try to restrict ways in which Microsoft could (and already has) leverage its Windows monopoly in the future.

Closing Comments:

I have focused my comments here on how the proposed settlement would affect JumpStart Wireless Corporation. I have been particularly helped by the analysis published by the Computer and Communication Industry Association at <http://www.ccianet.org/papers/ms/sellout.php3>.

I feel that the proposed settlement has other serious flaws. To that end, I would like to echo the comments made by Dan Kegel, whose comments can be viewed at <http://www.kegel.com/remedy/letter.html> . I strongly support his overall comments on the proposed settlement and would like to add my voice to his.

To whoever is reading this, I realize that you have had to wade through a lot of material. I very much appreciate your time and effort.

Sincerely,

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